

## COMMUNITY POLICY DEVELOPMENT GROUP

29<sup>TH</sup> MAY 2018

### AN OVERVIEW OF SERVICE DELIVERY MODELS FOR LEISURE

**Cabinet Member(s):** Cllr Colin Slade  
**Responsible Officer:** Lee Chester – Leisure Manager

**Reason for Report:** To provide a brief overview of service delivery models for leisure services.

**RECOMMENDATION:** For the paper to be noted.

**Relationship to Corporate Plan:** Aim 3 – Promote physical activity, health and wellbeing. Ensure the financial sustainability of our leisure centres.

**Financial Implications:** None, this paper is for information and noting.

**Legal Implications:** None, this paper is for information and noting.

**Risk Assessment:** None as this paper is for information and noting. All of the options, with the exception of direct provision, would require, if pursued, extensive advice and input from Legal Services or an external firm, in evaluating options, procurement and drawing up documents.

**Equality Impact Assessment:** None, this paper is for information and noting.

#### 1.0 Introduction

- 1.1 Mid Devon District Council manages the provision of leisure service in-house across three locations; Culm Valley Sports Centre, Cullompton, Exe Valley Leisure Centre, Tiverton and Lords Meadow Leisure Centre, Crediton.
- 1.2 Culm Valley Sport Centre has a dual use agreement with Devon County Council which allows Cullompton Community College direct access to the main sports hall and artificial turf pitch facilities from 0900 to 1700hrs, Monday to Friday during term time. Exe Valley Leisure Centre also has a dual use agreement with Devon County Council which allows Tiverton High School direct access to the artificial turf pitch facilities from 0900 to 1700hrs Monday to Friday during term time.
- 1.3 The provision of leisure services is discretionary. Mid Devon District Council maintains full control for the service provision and programming, whilst also carrying cost liability for employees, premises, purchases, capital charges, depreciation, and it is run as a business with a turnover in excess of £5M.
- 1.4 Mid Devon's land use is 92% farmland, compared against the UK farmland total of 57%. Geographically Mid Devon has 3 leisure sites which is comparable within the Devon areas. For example East Devon has 11 sites, not including parks or greens, with Exmouth and Sidmouth offering multiple facilities within the towns.

1.5 Alternative models for leisure services exist across the country; each model reflecting the local circumstances relating to that community and that Council. The commercial sensitivity surrounding outsourced leisure agreements are limited in specific detail. The very nature of commercial agreements means that there are a myriad of variations to each commercial approach. In broad description there are two options; the direct provision of the service by the local authority or a contractual arrangement with a third party. The image below is a very rough approximation of the nature of the different models as a function of control and financial uncertainty and liability.

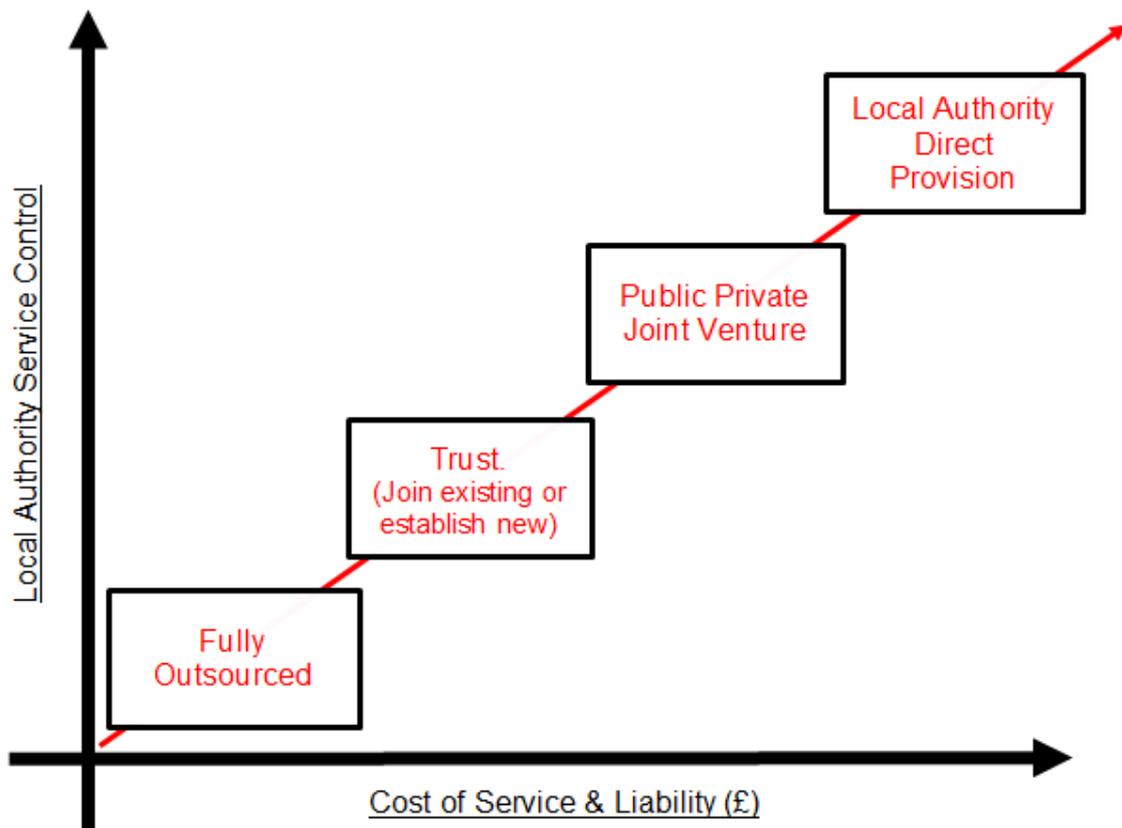


Figure 1 - Leisure Management Delivery Models

## 2.0 Service Overview

2.1 To put the understanding of each delivery model into context an overview to each service delivery model has been summarised highlighting the potential advantages and disadvantages. A recurring point made in this briefing note is that each model is nuanced by the needs of each party at the time of any contract negotiation. Therefore an advantage, or disadvantage, can only be a generalisation as it may not apply to a every circumstance.

2.2 **Fully outsourced to a specialist operator;** (E.g. GLL, SLM Places for People, Parkwood Leisure)

2.2.1 Private sector outsourcing is the most common alternative delivery model, where the provision and management of the service is transferred via a

competitive procurement process, under TUPE regulations, to a private sector operator.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Defined spend set out in the contract</li> <li>• Access to wider commercial agreements</li> <li>• Economies of scale across multiple contracts can help to drive down the contract cost</li> <li>• Transfer of operating risks (at a price point)</li> <li>• Opportunity to have a fixed cost subject to contract loading premium</li> <li>• Potential for profit share or return on investment</li> </ul>	<ul style="list-style-type: none"> <li>• TUPE transfers can expose significant pension liabilities for the Council</li> <li>• Authority committed to a contract, typically 20 – 30 years</li> <li>• Without realising savings in the back-office recharges, costs would still lie with the Council</li> <li>• Additional contract monitoring costs; Client function cost</li> <li>• Any fixed costs element will likely include an element of financial contingency (cost) to manage risk</li> <li>• Maintenance liability may still rest with the Council</li> <li>• Where maintenance is included in the contract there is often a cost to the council to establish an agreed ‘handover’ position; thereafter costs fall to the contractor who will likely include an element of financial contingency</li> <li>• Any change requests usually incur a cost</li> </ul>

### 2.3 Transferring Leisure Services to an established Charitable Trust; (e.g. Horizons, Fusion, LED, Legacy Leisure)

2.3.1 Leisure services are outsourced to a separate organisation or company in exactly the same way as outsourcing described above. The Council may retain ownership of the facilities, which would then be leased to the Trust. Outsourcing to an established trust will require a competitive tendering process, which is exactly the same as the process for outsourcing to a private sector operator, and contracts typically last for 5-10 years. The provision of recreation is defined as a charitable activity and exempt from many forms of tax, including National Non Domestic Rates (NNDR) and Value Added Tax (VAT). Transferring leisure services to a charitable Non Profit Distributing Organisation (NPDO), or more commonly referred to as a Trust, can deliver significant financial benefits for a local authority in the form of a mandatory 80% relief from NNDR with the option to grant a further 20% discretionary relief.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• NNDR and VAT savings</li> <li>• Lower set up costs, overheads and support cost than setting up a new trust</li> <li>• Economies of scale and access to Specialised leisure management</li> <li>• Competitive process should maximise</li> </ul>	<ul style="list-style-type: none"> <li>• Commonly a significant reduction of Local Authority control</li> <li>• A long term arrangement with complicated exit considerations</li> <li>• TUPE transfers can expose significant pension liabilities for the Local</li> </ul>

<p>potential savings</p> <ul style="list-style-type: none"> <li>• Protects resources by ring fencing spending through a contract</li> <li>• Transfer of operating risks</li> <li>• Access to external funding streams</li> </ul>	<p>Authority</p> <ul style="list-style-type: none"> <li>• Potential additional contract monitoring costs</li> <li>• Without realising savings in the back-office recharges, costs would still lie with the Council</li> <li>• Authority usually retains lifecycle liability for assets</li> <li>• External investment can be expensive</li> <li>• Trusts commonly do not have assets to secure a commercial loan, subject to the legal agreements regarding ownership of the assets</li> <li>• Monies generated in the Trust are locked into the Trust</li> <li>• In business rate retention scenario the Council would lose the revenue stream from a significant rateable premises</li> </ul>
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## 2.4 Transferring Leisure Services to a new Leisure Trust

2.4.1 Local authorities have the power to establish and transfer services to new leisure trusts without having to go through any competitive tendering process. The transfer process involves setting up a shadow trust which then negotiates with a local authority to take over the management and operation of leisure facilities and services. Trustees are recruited from the local community to sit on the Board of the Trust, and the Trust applies for charitable status from the Charities Commission. Once agreement is reached with the local authority the formal transfer takes place, including a TUPE transfer of staff.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• NNDR and VAT savings</li> <li>• Focus on sport and leisure</li> <li>• Can allow management to grow business outside of local authority control</li> <li>• Authority can retain a degree of influence and indirect control</li> <li>• Provides flexibility in terms of grant funding</li> <li>• Promotes community engagement and involvement</li> <li>• Can allow savings to be reinvested in services and facilities</li> <li>• Improves an Authority's partial VAT exemption position</li> <li>• May open up further sources of investment</li> <li>• Can boost future not for profit capacity in an area if other leisure services run</li> </ul>	<ul style="list-style-type: none"> <li>• Loss of direct control</li> <li>• Can be expensive to set up</li> <li>• Lacks economies of scale</li> <li>• Need to build management support and systems</li> <li>• Without realising savings in the back-office recharges, costs would still lie with the Council</li> <li>• Can be difficult finding trustees with the relevant skills and experience</li> <li>• Can be hard to secure investment in early years</li> <li>• Potential for reduced links with other Council services, such as education</li> <li>• Reliant on existing management - in poor performing circumstances this would not address operator deficiencies</li> <li>• Authority generally retains lifecycle</li> </ul>

in-house	liability and ultimately operating risk if trust fails
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## 2.5 Joint Venture

2.5.1 The use of a Joint Venture would be a new development different to outsourced or Trust arrangement, and is an agreement between two or more individuals or companies usually entered into with a specific goal in mind. Each party will generally want to maintain their separate business/entity and will enter into the business arrangement with a strategic goal in mind. The partnership sits behind a contract and members of the local authority and an external leisure operator share seats on a board. The procurement of a Joint Venture may include using the EU competitive process to maximise competition during the bidding and can take a period of 18 months. It could be created using the Teckal exemption to transfer the service to a new commercial entity formed by the joint venture.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• It is temporary long term arrangement between the parties</li> <li>• The parties have access to additional resources as they are coming together for a mutual and specific goal</li> <li>• The parties can complete a project which they may not have had the finances or staff to complete on their own</li> <li>• The parties can share risks and costs</li> <li>• Increasing opportunities for growth of your business including financial growth</li> <li>• Both parties have the ability to share the benefits of success</li> </ul>	<ul style="list-style-type: none"> <li>• To get progression with business decisions agreement between both parties is required</li> <li>• Dealing with different working arrangements, workplace cultures and management styles between the parties can be challenging</li> <li>• Commitment or change of business need or political direction by either party to the JV can put the JV at risk</li> <li>• TUPE transfers and change in T&amp;Cs for staff</li> </ul>

## 2.6 Local Authority Direct Provision

2.6.1 The current arrangement for leisure provision by Mid Devon District Council operates with decisions for service delivery taken by officers and with Elected Members democratically steering the future business direction.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Full control of services offered and programme of events</li> <li>• Local authorities are able to access funding through the Public Works Loan Board (PWL B)</li> <li>• Responsive to needs of local</li> </ul>	<ul style="list-style-type: none"> <li>• Liability for all direct and indirect costs / risks</li> <li>• Potential for increased public expectation to deliver niche sport activities</li> <li>• A discretionary service competing for</li> </ul>

<p>community</p> <ul style="list-style-type: none"> <li>• Good local knowledge and service aligned to council priorities</li> <li>• No TUPE costs</li> <li>• No 'profit margin' paid</li> </ul>	<p>resource against non-discretionary statutory services</p>
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### 3.0 Summary of delivery models

3.1 **Outsource.** You get a 'fixed' product at a 'fixed' cost; changes invariably cost and you either continue to hold the infrastructure liability or you pay a market premium for someone else to take that risk for you.

3.2 **Trust - Join established or create new.** This has the feel of having more control than outsourcing to a private concern. However, a Trust Board can deliver less certainty than a contract associated with outsourcing a service. It is still a TUPE transfer and it carries all the financial liabilities of outsourcing. It is akin to outsourcing but without the potential to have any profit share or return on investment.

3.3 **Joint Venture.** This is still outsourcing, although by another name, with shared risk and shared liability; usually a way of introducing a 'commercial' management structure where the Council feel they cannot make the commercial changes necessary with their existing staff.

3.4 **Local Authority Direct Provision.** There is direct control of the service price and 'feel'. There is the ability to respond to the market in a timely manner, and push down cost without exposing the pension liability that comes with staff transfers. The balance to full control is full liability and exposure to cost and market conditions.

3.5 There was a ruling in July 2017, where the European Court of Justice determined that the UK requirement for local authorities to charge VAT on leisure activities was unlawful and that in-house leisure facilities run by local authorities should be at no disadvantage to those run as Trusts or via not for profit company mechanisms. Generally this is of more advantage to larger local authorities who have a greater ability to achieve a higher level of exempt from VAT income without it exceeding the VAT partial exemption de-minimis level of 5%, which would preclude input VAT from being recovered across the whole of the authority.

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**Circulation of the Report:** Leisure Management Team, Leadership Team, Cabinet Member